

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

GARRETT AVON SPINKS,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. 1:17-cv-875
)
)
DR. MANDY K. COHEN,)
SECRETARY, NC DEPARTMENT)
OF HEALTH & HUMAN SERVICES,)
THOMAS PRICE, SECRETARY OF)
U.S. DEPARTMENT OF HEALTH &)
HUMAN SERVICES¹, and PAMELA)
HILL, RANDOLPH COUNTY)
SUPERIOR COURT,)
)
Defendants.)

**FEDERAL DEFENDANT SECRETARY U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES' MOTION TO DISMISS OR IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGMENT**

NOW COMES Federal Defendant, Alex M. Azar II, Secretary of the U.S. Department of Health and Human Services, through Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina, and respectfully moves this Court to dismiss Plaintiff's complaint as it is filed against him, pursuant to Rules 12(b)(1), (5) and (6) of the Federal Rules of Civil Procedure or in the alternative for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

A memorandum of law is attached in support of this motion.

¹Thomas E. Price, M.D., has ceased to hold the office of Secretary of Health and Human Services. Pursuant to Federal Rule of Civil Procedure 25(d), Alex M. Azar II is automatically substituted for Thomas Price as the Defendant in this action.

WHEREFORE, Federal Defendant Azar, Secretary of the United States Health and Human Services, hereby moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), (5) and (6) or in the alternative for summary judgment pursuant to Fed. R. Civ. P. 56 and for such other and further relief as to the Court seems just and proper.

This the 18th day of May, 2018.

Respectfully submitted,

MATTHEW G.T. MARTIN
UNITED STATES ATTORNEY

/s/ Joan B. Childs
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Defendants,)

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2018, the foregoing Federal Defendant's Motion to Dismiss or in the Alternative Motion for Summary Judgment was electronically filed with the Clerk of the Court using the CM/ECF system, and served upon the following:

KATHERINE M. MCCRAW kmccraw@ncdoj.gov
KATHRYN HICKS SHIELDS kshields@ncdoj.gov

The undersigned further certifies that she served the following non CM/ECF party by depositing a copy of the same with the United States Postal Service, first-class postage prepaid, addressed to the following:

Garrett Avon Spinks
482 Isley Lane
Ramseur, NC 27316

Respectfully submitted,

MATTHEW G.T. MARTIN
UNITED STATES ATTORNEY

/s/ Joan B. Childs
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